CORRECTED COPY

NO. 87 1856

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

RAMSEY ASSOCIATES, INC.,
NORMAND RAMSEY and RAYMOND RAMSEY,
Petitioners

v.

VICTOR and MARY COTY,
DOROTHY NELSON, d/b/a STOWE COUNTRY SHOP and
ANTON and PAMELA FLORY,
d/b/a DIE ALPEN ROSE MOTEL,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

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May 11, 1988

QUESTIONS PRESENTED

1. Does the imposition by the State of Vermont of civil nuisance liability for conditions of unsightliness intentionally created as an expression of protest against government action constitute an abridgment of the freedom of speech as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States?

2. Under the circumstances of this case, is the imposition of an award of $380,000.00 in punitive damages in addition to compensatory damages an "excessive fine" in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States?

LIST OF PARTIES

The parties to the proceedings below were the Petitioners, Ramsey Associates; Inc., Normand Ramsey and Raymond Ramsey, and the Respondents, Victor and Mary Coty, Donald and Dorothy Nelson, and Anton and Pamela Flory. Mary Coty and Donald Nelson died during the pendency of the case below.

The Respondents before this Court include Victor Coty, Dorothy Nelson, and Anton and Pamela Flory, the surviving Plaintiffs below.

Petitioner Ramsey Associates, Inc. has no parent companies, subsidiaries or affiliates to list pursuant to Rule 28.1.

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IN THE SUPREME COURT OF THE UNITED STATES

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RAMSEY ASSOCIATES, INC.,
NORMAND RAMSEY and RAYMOND RAMSEY,
Petitioners

v.

VICTOR and MARY COTY,
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ANTON and PAMELA FLORY,
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Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

The Petitioners, Ramsey Associates, Inc., Normand Ramsey and Raymond Ramsey, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Vermont entered in the above-entitled proceedings on February 12, 1988.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Vermont is reported at _____ A.2d _____ and is reprinted in the appendix hereto, p. 1a, *infra*.

The findings and judgment of the Superior Court of the State of Vermont (Levitt, J.) have not been reported. They are reprinted in the appendix hereto, p. 33a, *infra*.

JURISDICTION

This action was originally commenced by the Respondents in the Superior Court of the State of Vermont seeking an injunction and compensatory and punitive damages based upon maintenance by the Petitioners of a "nuisance" in the form of a pig farm on the Petitioners' property in Stowe, Vermont.

After a non-jury trial, the Superior Court awarded the Respondents the injunctive relief sought plus very substantial compensatory and punitive damages. On appeal to the Supreme Court of the State of Vermont, the basic legitimacy of the Superior Court award was upheld, although the judgment for punitive damages against Raymond Ramsey was vacated and the case was remanded to the Superior Court for reconsideration of the amount of punitive damages that should be awarded against Normand Ramsey.

Thus, although reconsideration of the amount of punitive damages to be awarded against Normand Ramsey has not yet occurred, there is a final judgment on the issues presented to this Court for review, namely the constitutionality of the damage awards based upon the First, Eighth, and Fourteenth Amendments to the United States Constitution. There is no action within the scope of the remand to the Vermont Superior Court which would vitiate any of the issues raised by the Vermont Supreme Court decision for which review is here sought.

The Vermont Supreme Court decision was issued on February 12, 1988. The jurisdiction of this Court to review the judgment of the Vermont Supreme Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution First Amendment:

> Congress shall make no law . . . abridging the freedom of speech . . . .

United States Constitution Eighth Amendment:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

United States Constitution Fourteenth Amendment, Section 1:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Ramsey Associates, a corporation owned and operated by Normand Ramsey of South Burlington, Vermont, at one time owned and operated several motels located in various northern New England states. In 1981 the corporation purchased an open tract of land along the Mountain Road in the town of Stowe, Vermont, upon which it proposed to construct an eighty-seven unit motel. Stowe, Vermont was at that time, and still is, highly developed with motels, shops and similar enterprises ancillary to a major ski resort.

Although the municipal zoning of the property in question permitted motel use, a permit was also required from the State under the Vermont Site Location Law (Act 250).

Ramsey's application for the Act 250 permit was sharply challenged before the regional board by various Stowe residents, neighbors and abutting landowners, including the Respondents. Of the Respondents, the Florys owned and operated a motel directly across the Mountain Road from the proposed project and Mrs. Nelson operated a shop which sold cheese and tourist novelties next door to the Florys. After lengthy proceedings, the Act 250 board denied the requested permit citing as grounds for its decision "aesthetics" and insufficient provision for disposal of sanitary waste.

Promptly following the issuance of the Act 250 board decision, the Ramseys fenced the land and established a pig farm on the property. The establishment and operation of the pig farm were at all times in accord with the land use and animal husbandry regulations of the State of Vermont. One of the first actions of the Ramseys after fencing the property was the dumping of a considerable quantity of manure around the perimeter of the property to fertilize the land to grow corn. The existence and the smell of the manure offended the Respondents and they immediately brought suit to enjoin the pig farm and the use of manure. Their request for a preliminary injunction was denied, but the suit was nevertheless maintained.

Although the pig farm did comply with all applicable land use laws and regulations, its appearance was far from appealing. That circumstance, as well as the timing of the farm, convinced the courts below that the unaesthetic visual effects were intentional and in reaction to the unfavorable decision of the Act 250 board on the motel permit. The smell of manure soon abated, but the Respondents' umbrage at the appearance of the farm was fed by a series of conditions on the farm property which appeared to the Respondents as visually unaesthetic, unappetizing, and unappealing. The farm was not maintained as a "neat as a pin" model establishment. And the Respondents, who kept the farm under constant observation, testified to witnessing farm practices which they felt were cruel and neglectful to the

animals involved. All of this display, they felt, was intended to ridicule them and their opposition to the Ramseys' motel proposal.

Despite Petitioners' assertion at trial that the farm operation was a legitimate agricultural enterprise, the trial judge expressly found that the creation of the unappetizing visual effects was intentional and in reaction to the denial of the request for a motel permit. Although the record contained remarkably little evidence of actual monetary damages, the presiding justice awarded liberal compensatory damages for "emotional upset, discomfort, annoyance and embarrassment" in favor of each of the Respondents. Furthermore, because of the deliberate quality of the Petitioners' protest, the judge levied a punitive damage award of $380,000.00 against all three Petitioners.

On appeal to the Vermont Supreme Court, the Petitioners challenged the appropriateness of awarding nuisance damages for unaesthetic visual conditions. Cited in support of the Petitioners' argument was Vermont law, including a case suggesting that the law of nuisance in such circumstances may indeed be restrained by the protections afforded by the First Amendment. At oral argument Petitioners' counsel argued to the Vermont Supreme Court that if Mr. Ramsey's pig farm were determined to be a deliberate response to the denial of the motel permit, then such a protest would be protected by the guarantees of free speech and free expression contained in the First Amendment to the United States Constitution. The Petitioners also protested the award of punitive damages in brief and at oral argument on the basis of the Eighth Amendment to the United States Constitution.

The Vermont Supreme Court, however, apparently as impressed as the Court below with the intentional nature of the Petitioners' conduct, sustained the damage award against the First Amendment claim and also sustained the award of punitive damages against the Eighth Amendment claim. The punitive damages awarded by the trial court against Raymond

Ramsey, however, were vacated because of insufficient proof of his intentional participation in the statement. The Superior Court had also erroneously applied a Vermont rule which required that an award of punitive damages against multiple defendants be based upon the net worth of the least culpable defendant. The Supreme Court overruled this prior rule and remanded the case for consideration of the punitive damages with respect to the two more wealthy and more culpable defendants remaining in the case.

The case is now pending before the Vermont Superior Court for this reconsideration. The case is also ripe for review by this Court on certiorari. On the constitutional issues raised the Vermont Supreme Court has finally spoken. There is nothing which the Vermont Superior Court can do within the scope of the remand to vitiate the constitutional infringements alleged.

REASONS FOR GRANTING THE WRIT

I.

The imposition by the State of Vermont of civil nuisance liability for conditions of unsightliness intentionally created as an expression of protest against governmental action constitutes an abridgment of the right of free speech and expression guaranteed by the First Amendment to the United States Constitution.

If permitted to stand, the decision of the Vermont Supreme Court in this case would be precedent for serious curtailment of a citizen's right to employ nonverbal modes of expression to protest governmental action. In the context of recreational development in rural Vermont, the visually offensive pig farm created by the Ramseys to protest the arbitrary and irrational governmental decision on their motel application is a classic form of constitutionally protected expression. It was so inter-

preted by their neighbors. It was so interpreted by the courts. Both the Vermont Superior Court and the Vermont Supreme Court placed great emphasis on the intentionality of the eyesore. Apparently if the Ramseys had permitted the offensive conditions to exist by negligence and without a particular protest motive, the penalty would have been less severe. However, because the pig farm was perceived as a deliberate statement protesting and challenging the land use restrictions supported by the neighbors and imposed by the government, the Ramseys were found culpable and legally liable for substantial damages.

This case presents the picture of a land developer proposing what seemed to him a perfectly appropriate project in a locality already well-developed with similar commercial and recreational enterprises. The proposed motel was in conformity with local zoning and land use regulations. The project, however, was also subject to "Act 250", a Vermont environmental protection statute which requires special permits issued by regional boards even for projects such as motels. It is easy to imagine the irony which the developer must have felt to be opposed before the regional board not only by citizens from the resort town of Stowe, but also by neighbors who themselves had developed their property for similar business purposes. As was testified to at length before the court below, the Mountain Road in Stowe is a highly developed tourist business area. The Ramsey property was one of the last vacant parcels on the road. This was scarcely a despoilation of virgin wilderness.

It is not hard to imagine that the developer would feel some impulse to protest a decision denying his project on the grounds of "aesthetics". And what would be a more logical and forceful statement of protest than to produce on the land a use entirely legal and in accord with all regulations, yet also unabashedly unaesthetic! Of all agricultural activities, the pig farm conjures up in the mind the most redolent image of unaesthetic agricultural practices. Although Mr. Ramsey did indeed operate farms in other parts of Vermont, neither the Superior Court nor

the Supreme Court were under any impression other than that his choice of pigs as livestock was intentional.

The protest nature of the farm was reemphasized and reconfirmed by many aspects of the farm which the courts below found were deliberately made unaesthetic. Trenches dug on the farm property were left open and not filled in, a large tank was put on the property and was apparently not used, the "farmhouse" was a small mobile home placed on the property, pigs ~~were fed~~ near the perimeter of the fence in full view of all who would be passing by. All of these facts found by the courts below bespoke the character of this farm as a constitutional visual protest against the arbitrary action of the Act 250 board. Yet it was precisely the intentionality of these visual effects which made them most objectionable in the eye of the courts below. It was the intentional nature of the protest which apparently justified the compensatory and punitive damages awarded in favor of those Act 250 objectors who were most offended by the protest.

Prior to the Vermont Supreme Court decision in this case, the decisional law of the State of Vermont had refused to recognize a purely visual condition as a nuisance. In decisions concerning auto graveyards, cemeteries, and most recently, pornographic bookstores, the Vermont Supreme Court had repeatedly declared that:

> The law will not declare a thing a nusans [sic] because it is unsightly and disfigured, nor because it is unpleasant to the eye and a violation of the rules of propriety and good taste, nor because the property of another is rendered less valuable. No fanciful notions are recognized. The law does not cater to men's tastes, nor consult their convenience merely.

Woodstock Burying Ground Ass'n v. Hager, 68 Vt. 488, 489, 35 A. 431, 432 (1896) (quoted in *Napro Development Corp. v.*

Town of Berlin, 376 A.2d 342, 347 (Vt. 1977)). Embedded in this caselaw's reluctance to adjudge private eyesores as nuisances is the same deference to expressive activities formally embodied in the guarantees of the First Amendment. As the visually offensive activity becomes more purposeful, and relates in some way to a statement, then its status as protected expression becomes more clear.

In this case, the courts below found and repeatedly stressed that the action of the Ramseys in establishing the piggery was a direct reaction to the Act 250 proceedings and the denial of their permit. The Superior Court found that the operation of the farm had no significant commercial purpose. The reason for its existence was to dramatize the irony of the Act 250 board's decision denying the permit based upon "aesthetics".

This Court has long held that the guarantees of the First Amendment, as applied to the states by the Fourteenth Amendment, protect both speech and nonverbal expression, especially when such expression amounts to a protest against governmental action. *See, e.g., Spence v. Washington*, 418 U.S. 405 (1974) (displaying upside down American Flag with superimposed peace symbol); *Tinker v. Des Moines School Dist.*, 393 U.S. 58 (1969) (wearing black armbands to protest Vietnam War); *Edwards v. South Carolina*, 372 U.S. 229 (1963) (demonstration to protest discrimination against blacks). The touchstone appears to be that the more clearly an act can be seen as a statement of protest, the more likely it is that such act is protected. While not every type of conduct is protected by the First Amendment's guarantee of free expression, *see, e.g., United States v. O'Brien*, 391 U.S. 367 (1968) (prosecution for burning draft card), nonverbal expression with a purely visual impact has been routinely protected.

There can be no doubt that the creation of the Stowe piggery was an intentional act of protest as found by the Vermont courts. The visual message of the farm was clear. Although it

may have caused chagrin or even upset to those who received the message, the sending of that message was protected by the First Amendment.

This case presents the issue of whether a state can stifle visual citizen protest under the rather broad and general rubric of private nuisance law. Neither the State of Vermont nor those who support a particular governmental action should be permitted to penalize protest of that decision simply because the protest causes chagrin, humiliation or embarrassment. This case presents the opportunity for this Court to make clear the relationship between assertive conduct protesting a perceived injustice and actual invasions that may properly serve as the basis for a financial recovery. The decision of the Vermont Supreme Court to award compensatory and punitive damages for what amounted to no more than a starkly visual protest against a governmental land use decision is contrary to the United States Constitution and should be reviewed and reversed.

II.

Under the circumstances of this case, the imposition of an award of $380,000.00 in punitive damages in addition to compensatory damages constitutes an "excessive fine" in violation of the Eighth Amendment to the United States Constitution.

In this case, the Supreme Court of the State of Vermont has sanctioned an award of some $380,000.00 in punitive damages in favor of the Respondents despite the fact that these people have already received generous compensatory damages for their humiliation, embarrassment and emotional upset caused by the Petitioners' pig farm protest.

In recent cases, however, the constitutional propriety of grossly disproportionate punitive damage awards has increasingly been called into question as defendants have begun to

challenge such awards under the Excessive Fines Clause of the Eighth Amendment. Although no court has yet struck down an award of punitive damages based solely on the Eighth Amendment to the Federal Constitution, at least one court has reached this result by employing an equivalent clause contained in its State Constitution, *see Colonial Pipeline Co. v. Brown*, 365 S.E.2d 827, 831 (Ga. 1988), and some judges have stated that the Eighth Amendment might be an appropriate yardstick against which to measure the propriety of punitive damage awards, *see, e.g., Alabama Power Co. v. Cantrell*, 507 So.2d 1295, 1307-09 (Ala. 1986) (Maddox, J., concurring in part, dissenting in part).[1]

This Court has already recognized the pressing need to determine whether the Eighth Amendment limits the ability of trial courts and juries to award punitive damages. In *Aetna Life Ins. Co. v. Lavoie*, 106 S. Ct. 1580 (1986), this Court heard argument on this precise issue, but in the end vacated and remanded the judgment of the Alabama Supreme Court on other grounds. Writing for the Court, however, Chief Justice Burger noted that whether the $3.5 million punitive damage award in that case was "impermissible under the Excessive Fines Clause of the Eighth Amendment . . . raise[d] *important issues* which, in an *appropriate setting,* must be resolved . . . ." *Id.* at 1589 (emphasis supplied).

Presently pending before this Court is the case of *Bankers Life and Casualty Co. v. Crenshaw*, No. 85-1765, which was argued on November 30, 1987. The *Bankers Life* case also raises the issue of whether an inordinately large punitive damage

[1]Other courts, typically relying upon this Court's holding that the Cruel and Unusual Punishment Clause of the Eighth Amendment applies only to criminal cases, *Ingraham v. Wright*, 430 U.S. 651 (1977), have determined that the Eighth Amendment has no application in civil cases. *See, e.g., Tetnan v. A. H. Robins Co.*, 738 P.2d 1210 (Kan. 1987); *Underwriters Life Ins. Co. v. Cobb*, 746 S.W.2d 810 (Tex. App. 1988); *Palmer v. A. H. Robins Co.*, 684 P.2d 187 (Colo. 1984).

award fails to pass muster under the Eighth Amendment. If the Court should find that case to be an inappropriate vehicle for deciding this important constitutional issue, then *certiorari* should be granted in the instant case. Unlike in the *Bankers Life* case, there can be no argument here that the Eighth Amendment issue was not raised below. Petitioners have properly preserved this constitutional issue and it was expressly addressed by the Vermont Supreme Court. *See* p. 22a, *infra.*

Ingraham v. Wright, 430 U.S. 651 (1977), the Court's seminal decision with respect to the applicability of the Eighth Amendment to cases not involving criminal punishment, deals only with the applicability of the Eighth Amendment's Cruel and Unusual Punishment Clause to civil cases. *Id.* at 653 ("whether the paddling of students as a means of maintaining school discipline constitutes cruel and unusual punishment in violation of the Eighth Amendment"). Even so, the majority opinion in that case left open the possibility that "[s]ome punishments, though no labeled 'criminal' by the State, may be sufficiently analogous to criminal punishments in the circumstances in which they are administered to justify application of the Eighth Amendment." *Id.* at 669 n.37.

In addition, four justices dissented from the *Ingraham* decision. Justice White, in his persuasive dissent, finds it "plainly wrong" to distinguish between criminal and noncriminal punishment for the purposes of the Eighth Amendment. Citing *Trop v. Dulles*, 356 U.S. 86, 96 (1958), Justice White states that:

> The relevant inquiry is not whether the offense for which a punishment is inflicted has been labelled as criminal, but whether the purpose of the deprivation is among those ordinarily associated with punishment, such as retribution, rehabilitation, or deterrence.

Ingraham v. Wright, 430 U.S. at 868-87 (White, J., dissenting).

Justice White concludes that, "[i]n fact, as the Court recognizes, the Eighth Amendment has never been confined to criminal punishments." *Id.* at 688.

Punitive or exemplary damages—"private fines levied . . . to punish reprehensible conduct and to deter its future occurrence," *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974)—serve the deterrent purpose of criminal punishment rather than the compensatory goal of civil damage remedies. *See Colonial Pipeline*, 365 S.E.2d at 831. There is a strong argument, therefore, supporting the view that punitive damage awards should be measured against the constitutional standards imposed by the Eighth Amendment and struck down or reduced when they are found to be excessive.

The time has come for this Court to address this important question and declare that excessive punitive damage awards based solely upon common law causes of action cannot be sustained under the Eighth and Fourteenth Amendments to the United States Constitution. Punitive damages are awarded for reasons that are obviously penal or retributive in nature. The absence of any statutory or other standards raises the specter that courts will be free to sanction the type of excessive fines that are prohibited by the Eighth Amendment unless this Court declares that such awards are subject to constitutional review.

This case furnishes a prime example of why discretionary awards of punitive or exemplary damages can no longer be constitutionally sanctioned. Stated simply, Petitioners sought to build a motel on their property in Stowe, Vermont. When the state environmental board denied their application based on aesthetics, their reaction was a classic example of New England individualism. The protest pig farm was so effective in getting its message across that it became an ironic tourist attraction in the middle of a tourist region. By building a pig farm where he was not permitted to build a motel, farmer Ramsey sought to expose the illogicality and arbitrariness of the board's decision and to hold the board's decision up to ridicule.

Undoubtedly Respondents were offended by the smell as well as the sight of the piggery in lieu of a motel. But what really stung was the message and the derision implicit in the entire operation.

To the extent there was an invasion of odors or even flies from the farm, such an invasion would be properly compensable under the established common law of nuisance. But given the obvious character of the farm and the obviousness of the joke, where are the grounds for the massive punitive damages awarded in this case? What egregious misconduct toward the plaintiffs justified the imposition of such a substantial penalty?

The likely grounds for the punishment are alluded to repeatedly in the opinions of both the trial court and the appellate court. Major sources of the Respondents' visual affront were observations they made of neglect and mistreatment of livestock on the Stowe farm. Both of the opinions excoriate the petitioners for mistreating animals as a part of this macabre protest. It matters little that, although the farm was inspected on more than one occasion, it was never cited for any violation of the animal husbandry laws of the State of Vermont.

If one accepts some of the assertions of the Respondents concerning their observations, it is very difficult to feel anything but loathing for the petitioners. The indignation of both courts was fueled, if not sparked, by what undoubtedly appeared to the judges to be needless suffering of innocent animals as a part of the Ramseys' protest prank. But the suffering of the animals, if indeed the animals did suffer, was not a harm for which Respondents ought to recover. Respondents were not damaged thereby. Any suffering on their part were purely out of sympathy and not out of actual danger or damage to themselves.

None of us, of course, including Mr. Ramsey, condones the mistreatment of animals for any purpose. But if such mistreatment occurs, it should not be controlled by awarding immense

punitive damage awards to angry neighbors. This case demonstrates that the free availability of discretionary punitive damages to redress common law invasions permits a court to punish behavior other than that which is before it for adjudication, and allows an adjudicator free reign to respond to emotion without the salutory restraint of required articulation. Justice Thurgood Marshall has warned of the danger that "punitive damages may be employed to punish unpopular defendants." *Electrical Workers v. Foust,* 442 U.S. 42, 50-51 n.14 (1979). This case provides the vehicle whereby this Court can impose meaningful bounds and restrictions upon the availability of this generalized private punishment by addressing and recognizing the limitations imposed by the Eighth Amendment's Excessive Fines Clause.

CONCLUSION

For the foregoing reasons, this petition for *certiorari* should be granted. The novel constitutional issues concerning whether Petitioners' conduct is protected expression under the First Amendment, so as to preclude private recovery for a visual nuisance, and whether the award of punitive damages violates the Excessive Fines Clause of the Eighth Amendment, both demand this Court's immediate attention.

Respectfully submitted,

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May 11, 1988

APPENDIX

SUPREME COURT
FORM NO. 1

ENTRY ORDER

SUPREME COURT DOCKET NO. 85-399

June Term, 1987

Victor and Mary Coty, Donald and Dorothy Nelson d/b/a Stowe Country Shop and Anton and Pamela Flory d/b/a Die Alpen-Rose Motel	APPEALED FROM: Lamoille Superior Court Docket No. S134-82Lc

v.

Ramsey Associates, Inc.;
Normand Ramsey and
Raymond Ramsey

In the above entitled cause the Clerk will enter:

Affirmed in part and reversed in part; the cause is remanded for reconsideration of the punitive damages awards.

FOR THE COURT:

Dissenting:

S/_____
Louis P. Peck, Associate Justice

Concurring:

_____ S/ _____
John A. Dooley, Associate Justice

_____ S/ _____
Albert W. Barney, Chief Justice (Ret.), Specially Assigned

_____ S/ _____
F. Ray Keyser, Associate Justice (Ret.), Specially Assigned

_____ S/ _____
Edward J. Costello, District Judge (Ret.), Specially Assigned

Vt. Supreme Court
Filed in Clerk's Office

Feb. 12, 1988

No. 85-399

Victor and Mary Coty, Donald and Dorothy Nelson d/b/a Stowe Country Shop and Anton and Pamela Flory d/b/a Die Alpen-Rose Motel	Supreme Court On Appeal from Lamoille Superior Court
v.	June Term, 1987
Ramsey Associates, Inc.; Normand Ramsey and Raymond Ramsey	

Linda Levitt, J.

Stevens & Elliott, Stowe, for plaintiffs-appellees

Robert D. Rachlin and Michael J. Gannon of Downs Rachlin & Martin, Burlington, and Peter L. Murray and Thomas C. Newman of Murray, Plumb & Murray, Portland, Maine, for defendants-appellants Ramsey Associates, Inc., and Normand Ramsey

William B. Gray and Michael O. Hill of Sheehey, Brue & Gray, Burlington, for defendant-appellant Raymond Ramsey

PRESENT: Peck and Dooley, JJ., and Barney, C.J. (Ret.), Keyser, J. (Ret.) and Costello, D.J. (Ret.), Specially Assigned

PECK, J. In the underlying nuisance action, plaintiffs alleged that defendants had established a highly offensive pig farm on a parcel of land in Stowe in retaliation for their opposition to a motel that defendants had planned to build on the site. Plaintiffs were residents and small business proprietors owning land immediately adjoining or across the road from the farm.

The suit was based on theories of nuisance and trespass. After a bench trial, the court awarded plaintiffs compensatory and punitive damages and enjoined any further unreasonable farm operations. Defendants appealed to this Court; we affirm in part and reverse in part.

Defendants filed separate briefs on appeal, raising a multitude of issues for our consideration. First, they claim that the trial court failed to apply the correct legal standard in the nuisance determination, arguing that any interference with plaintiffs' use and enjoyment of their properties was brief and insubstantial; that neither unsightliness nor malice is a proper basis for a finding of nuisance; and that the evidence adduced at trial was insufficient to support the court's conclusion. Defendants also attack the award of punitive damages, contending that the evidence does not support a finding of actual malice, that the award was excessive and violates both state and federal Constitutions. Defendant Raymond Ramsey argues that the trial court failed to provide clear statements of the method used in assessing damages and of the weight accorded to the various factors. Finally, defendant Normand Ramsey complains that plaintiffs Anton and Pamela Flory were not entitled to bring an action in the name of their motel because they had not registered to do business in the motel's name.

Normand Ramsey is the president and sole shareholder of defendant Ramsey Associates, Inc. (corporation), and his son, Raymond Ramsey, is the vice-president. The corporation owns and operates two large farms, a chain of motels, a nursing home, and an automobile supply store. In 1981, Normand Ramsey purchased, in the name of the corporation, an open tract of land along the Mountain Road in the town of Stowe. In the following year, Raymond Ramsey, also acting in the corporation's name, applied for an Act 250 permit to construct a seventy-nine unit motel on the parcel.

Plaintiffs Victor and Mary Coty reside on property adjoining

the pig farm. Plaintiff Dorothy Nelson owns a gift and gourment food shop, and plaintiffs Anton and Pamela Flory own a motel and residence; the Nelson and Flory properties are situated across the road from the farm. Plaintiffs formed a committee to oppose the planned motel and attempted to purchase the land, a large open meadow, for preservation purposes. Defendants, however, refused to sell.

In Late October, 1982, construction of a motel on the site was approved under Act 250, but the approval was limited to fifteen units rather than the seventy-nine proposed. Defendants were disturbed by this ruling, and they began preparations to establish an extensive pig farm on the land. Raymond Ramsey, acting on behalf of the corporation, applied successfully for a zoning permit to operate the farm, a permitted use under the provisions of Stowe's zoning ordinance.

Shortly after the Act 250 ruling was received, a large, rusty storage tank was placed in the meadow. This tank was never used. A few days later, the Ramseys and some workmen erected a fence around the parcel. When Mrs. Coty inquired as to the purpose of the fence, Normand Ramsey replied tersely: "Pigs!" On November 2 and 3, approximately sixteen truckloads of wet chicken manure, averaging thirteen cubic yards each, were dumped along a narrow strip directly across from the Nelson and Flory properties. The truck drivers had been instructed by Normand Ramsey to dump the manure along this particular strip, and Raymond Ramsey directed the dumping of the first truckload. The drivers used the Florys' driveway to turn their vehicles around, and both the driveway and the road were covered with manure. The dumping was halted when a temporary restraining order was served upon one of the drivers, who told police that the Ramseys had finally "gotten even" with plaintiffs.

At the subsequent hearing, the Ramseys testified that the manure would be used as fertilizer over an area of four acres,

and the court declined to issue a preliminary injunction. However, the mounds of manure were merely leveled off within an area of one-half acre. In the spring of 1983, approximately eleven to thirteen more truckloads of chicken manure were delivered, and most of these loads were deposited along the same strip of land. An expert produced by the plaintiffs testified, and the court found, that the resulting supply of fertilizer was so grossly in excess of the recommended application that it would kill any attempted crop. The manure encouraged an infestation of flies that plagued plaintiffs' properties during the spring, summer, and fall of 1983 and 1984. A powerful stench also engulfed the area, eventually requiring the Florys to purchase air conditioners for their motel.

In late November of 1982, approximately one hundred pigs and cows were delivered to the property along with a house trailer and ten or more junked automobiles. The animals were fed at a place closest to plaintiffs' properties. In December of 1982, defendant Normand Ramsey telephoned Mrs. Nelson on two occasions and told her that serious consequences would follow if she continued her opposition to the motel.

During the winter of 1982, the animals had inadequate shelter, food and water and, as a result, became sick and lame. Mrs. Nelson made an offer to provide water, but was turned down. Animals died, and decomposing carcasses were left lying around.

With variations, the conditions that began in November, 1982 continued up until the spring of 1985. The manure delivery in 1983 resulted in manure that was over three feet deep in places. The smell and resulting flies continued through 1984.

Because the pigs were not properly separated, the boars mingled with the piglets and attacked them. Roosters were penned together so that they pecked each other to death. By the fall of 1984, the property contained over two hundred sickly animals

along with over twenty carcasses of dead pigs, piglets, sheep and a goat. The dead animals were finally placed in an uncovered pit. Many of the piglets born in the winter of 1984-85 died; eight to ten burlap bags filled with piglet carcasses were removed. Normand Ramsey knew of these conditions and took few, if any, steps to improve them until just before the case came to trial. The trial court found that defendants "used the pretext of operating a farm to abuse and kill animals which itself had no purpose other than to intentionally annoy, upset and harass plaintiffs and to cause them economic injury."

Public curiosity was stimulated by the piggery, and traffic became congested in front of plaintiffs' properties. Tourists would often trespass upon plaintiffs' land in order to view and photograph the spectacle, and defendants issued an instruction sheet to farmhands regarding the treatment of tourists.

In addition, Mrs. Nelson's well and springs were polluted as a result of the excessive manure. At one point, defendants obtained a discovery order as part of their attempt to obtain approval for the motel. The order compelled Mrs. Nelson to allow the drilling of six test wells on her property so that the state could monitor any pollution. She refused and obtained a protective order. Plaintiffs testified that many pigs were slaughtered on the morning after the protective order was issued.

Defendants invested about $50,000 in the farm, excluding the purchase price of the land. No pigs were ever sold or marketed for their income.

Conditions greatly improved shortly before the case came to trial. The animals began receiving regular veterinary care along with adequate shelter and provisions. The number of pigs on the property was greatly reduced and healthy pigs arrived to replace sickly ones. The storage tank was screened and the junk cars removed. The trial court concluded that the farm could have

been operated with no deleterious effects on the plaintiffs. The court found that defendants' operations caused each of the plaintiffs to lose the full use and enjoyment of their land, to suffer emotional distress and, in the case of the Florys and Mrs. Nelson, to lose business income.

On the basis of these and other facts, along with the inferences drawn from them, the trial court concluded that the operation of the farm constituted a nuisance which infringed unreasonably upon plaintiffs' full use and enjoyment of their properties, and the court enjoined further operations not in accordance with proper husbandry practices. The court also concluded that the Florys and Mrs. Nelson had suffered a trespass as a result of the manure spilled on their properties and the pollution of Mrs. Nelson's well and springs. Defendants were enjoined from further trespasses. On the basis of detailed findings regarding each plaintiff's situation and the defendants' assets, the court awarded the following damages: $40,000 in compensatory damages and $80,000 in punitive damages to the Cotys; $70,500 in compensatory damages and $150,000 in punitive damages to Mrs. Nelson; and $77,161 in compensatory damages and $150,000 in punitive damages to the Florys.

I.

Defendants' initial claim on appeal is that the trial court erred, as a matter of law, in determining that the farm operations constituted a nuisance. They contend that the court based its conclusion on conditions that were too brief and insubstantial to rise to the level of legal nuisance.

In order to be considered a nuisance, an individual's interference with the use and enjoyment of another's property must be both unreasonable and substantial. *Dunlop v. Daigle*, 122 N.H. 295, 298, 444 A.2d 519, 520 (1982); W. Prosser, *Law of Torts* § 87, at 577-80 (4th ed. 1971). The standard for determining whether a particular type of interference is substantial is that

of "definite offensiveness, inconvenience or annoyance to the normal person in the community . . . ." Prosser, *supra* § 87 at 578. "Substantial harm is that in excess of the customary interferences a land user suffers in an organized society." 6-A American Law of Property § 28.25 at 73 (A.J. Casner ed. 1954). The trial court's findings regarding the degree of interference in the instant case are extensive and will not be detailed here. We hold, however, that they are adequately supported by credible evidence; accordingly they must stand. *Trustees of Net Realty Holding Trust v. AVCO Financial Services of Barre, Inc.*, 144 Vt. 243, 246, 476 A.2d 530, 532 (1984). Under either of the above standards, the operation of the pig farm constituted a substantial interference with plaintiffs' use and enjoyment of their properties.

Nor was the interference too brief to be considered a nuisance. The duration of a particular condition is an important factor in determining whether the interference caused is sufficiently substantial to be deemed a nuisance, but it is not a dispositive one. Prosser, *supra* § 87, at 580. In any event, the continuing nature of the offensive farm operations is clear from the evidence and the findings. The unreasonable use of the Ramsey property persisted for over two and one-half years, abating only when trial was about to commence. Although certain aspects of the nuisance varied in their intensity with the seasons, the overall condition of the piggery remained constant.

Defendants also contend that the trial court wrongly relied upon the unsightliness of their farm in declaring it a nuisance. As a general rule, the unsightliness of a thing, without more, does not render it a nuisance under the law. See *Woodstock Burying Ground Association v. Hager*, 68 Vt. 488, 489, 35 A. 431, 432 (1896). Some evidence of a trend away from this rule can be found in other jurisdictions. See, e.g., *Hay v. Stevens*, 271 Or. 16, 530 P.2d 37 (1975); see also Note, Aesthetic Nuisance: An Emerging Cause of Action, 45 N.Y.U.L. Rev. 1075 (1970). However, we need not deliberate about the rule's

continuing viability because this case involved more than mere unsightliness.[1] The trial court's nuisance determination was based in large part upon the odors, the flies, and the offensive animal husbandry practices.

The trial court's opinion makes clear, moreover, that the weightiest factor in its analysis was defendant's malicious motive. The court found that the conditions complained of were created intentionally, under circumstances indicating "extreme ill will and insult." In another finding, the court stated that defendants "used the pretext of operating a farm to abuse and kill animals which itself had no purpose other than to intentionally annoy, upset and harass plaintiffs and to cause them economic injury." On appeal, defendants note that the farm was an approved use of the land under Stowe's zoning regulations, and they maintain that an improper motive does not convert an otherwise lawful act into an unlawful one.[2] But the great majority of jurisdictions have held that where a defendant has acted solely out of malice or spite, such conduct is indefensible on social utility grounds, and nuisance liability attaches. Prosser, *supra* § 89, at 598-99. In sum, the lower court was correct as a matter of law in concluding that the operation of the piggery constituted an actionable nuisance.

II.

Many of defendants' arguments center upon the evidence presented at trial. They urge that this evidence supports neither

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[1]We observe that the interferences complained of in the so-called "spite fence" cases are often limited to aesthetics. See, e.g., *Welsh v. Todd*, 260 N.C. 527, 133 S.E.2d 171 (1963). The circumstances of this case demonstrate that a "spite farm" can produce far greater interferences than can a spite fence.

[2]In 1981, legislation was enacted for the express purpose of shielding reasonable agricultural activities from nuisance lawsuits. See 12 V.S.A. §§ 5751-5753. The activities at issue here are far removed from the sphere of the statutory protection.

the trial court's findings of fact nor its ultimate conclusion that a nuisance had been established.

This Court assumes a deferential role in reviewing a trial court's findings of fact: a finding will not be set aside unless, when the supporting evidence is viewed in the light most favorable to the prevailing party and the effects of modifying evidence are excluded, it is clearly erroneous. *Bruntaeger v. Zeller*, 147 Vt. 247, 250, 515 A.2d 123, 125 (1986). Furthermore, unless the party objecting to a particular finding was harmed by the alleged error, the objection will not be considered. *Hogel v. Hogel,* 136 Vt. 195, 198, 388 A.2d 369, 370 (1978).

We have scrutinized the voluminous trial transcript, and we are satisfied that most of the challenged findings are grounded upon credible evidence. Defendants direct our attention to contrary evidence in the record, but consideration of this evidence is precluded by the applicable standard of review. With the exception of certain findings relating to Raymond Ramsey, which will be discussed later in this opinion, any minor errors in the court's findings are harmless.

In several instances, defendants argue in the alternative that a particular finding does not provide sufficient ground for a holding of nuisance. But these contentions are simplistic, concentrating on the subject matter of a specific finding in isolation and ignoring the significance of cumulative interferences. The trial court did not base its conclusion of law on any one factor or incident; instead its decision was grounded on the totality of all the circumstances involved in the continuing pattern of unreasonable farming and husbandry practices. We conclude that the trial court's ultimate nuisance determination is supported by the evidence and by the findings of fact.

III.

The trial court's award of compensatory and punitive damages in this case was a major source of debate on appeal. Distillation of the many claims of error reveals four primary issues: (1) whether the trial court failed to include a clear statement of the method employed in assessing damages, (2) whether the court erred in computing compensatory damages, (3) whether the court erred in awarding punitive damages in the light of the evidence presented at trial, and (4) whether the punitive damages award is excessive under case law or under the terms of the Eighth Amendment.

A.

Defendant Raymond Ramsey maintains that the trial court failed to include a clear statement of the method used in assessing damages and of the weight given to the various factors in its analysis. "The purpose of findings is to provide a clear statement as to what was decided and why; where no indication appears of the method employed and weight accorded various factors, remand is necessary." *Richard v. Richard*, 146 Vt. 286, 287, 501 A.2d 1190, 1190-91 (1985). In *Hilder v. St. Peter*, 144 Vt. 150, 478 A.2d 202 (1984), a case involving a dispute between landlord and tenant, this Court reversed a judgment awarding $1500 in "additional compensatory damages" because the lower court did not indicate how it had reached that figure. *Id.* at 164-65, 478 A.2d at 211. Although the court's findings clearly demonstrated the appropriateness of awarding these additional damages in *some* amount, the case was remanded for a hearing and findings on what that amount should be. Here, in contrast, the trial court made no less than twenty-six findings of fact as groundwork for the damages analysis. In a discussion of its conclusions, moreover, the court included a painstaking explanation of the applicable theories of liability and damages. The court's final order incorporates a complete itemization of the damages awarded and the basis for each portion of the award.

The sole shortcoming of any significance relates to the theories of liability: although the trial court concluded that two of the plaintiffs had suffered a trespass, no damages were awarded on this basis.[3] Defendant claims reversible error, but this is not a case where it is difficult to determine under what theory damages were awarded. Cf. *Page v. Smith-Gates Corp.*, 143 Vt. 280, 283, 465 A.2d 1102, 1104 (1983). Instead, the court's order makes clear that each element of damages was awarded under a nuisance theory. While an express indication that no trespass damages were being awarded might have been preferable, defendant was not prejudiced by the court's failure to do so.

B.

The trial court awarded plaintiffs a total of $187,661 in compensatory damages, and Raymond Ramsey argues that the court made several errors in the course of its computations. He begins with the contention that the court improperly considered unsightliness as a factor, but this argument fails in light of our earlier holding on this issue. Defendant then attacks the trial court's award of lost-use damages, which were determined by assessing lost rental values, to plaintiffs Nelson and the Florys. He maintains that the court erred by taking the amount of lost rental value occurring in those months when the nuisance elements of flies and odors were at their worst and multiplying that amount by thirty-one, the total number of months that the nuisance continued. The flies and odors were not the only aspects of the continuing nuisance, however, and the court's findings that the decreases in rental values persisted over the entire period of the nuisance are not clearly erroneous. Furthermore, where the nature of a particular cause of action is not

[3]We need not decide whether the court erred in making no finding of agency with regard to the truck drivers who spilled the manure upon the Florys' property. Any such error would be harmless in light of the fact that no damages were assessed for trespass.

conducive to exact computation of damages, an award will withstand review unless it is grossly excessive. *Birkenhead v. Coombs*, 143 Vt. 167, 173, 465 A.2d 244, 247 (1983). Here, the trial court's award of $15,500 to Mrs. Nelson and $9,300 to the Florys in compensation for the lost rental values of their respective properties was not excessive and must be upheld.

Defendant also urges that the lower court's computation of the compensatory damages due to plaintiff Nelson was flawed by an award of $5,000 for the installation of a water purifier. He argues that the testimony relied upon by the court as to costs was beyond the scope of cross-examination and constituted a "guess" by the witness. As the transcript indicates, the trial court acknowledged that the testimony in question, offered by plaintiffs' expert on real estate values, was beyond the scope of cross-examination. The testimony was admitted, nevertheless, because the court had assumed an active role in questioning the witness on cross-examination and because considerations of fairness required that plaintiffs' counsel be allowed to elicit testimony on the points covered. The trial court enjoys a great deal of discretion in controlling the interrogation of witnesses and the presentation of evidence, and we find no error here. See V.R.E. 611(a); *Bevins v. King*, 147 Vt. 203, 207, 514 A.2d 1044, 1047 (1986). Also, while plaintiffs' expert admitted that his $5,000 estimate was a guess, he stated that the figure was "based on my experience with water systems" and "[m]y own exposure to water conditioning in the area." The transcript makes clear that the entire discussion of water purification centered around the expert's appraisal of plaintiff Nelson's real property and the effect that water pollution would have on that appraisal. Evidence that provides reasonable certainty in the estimation of damages is "sufficient to call for the exercise of sound judgment and to require a decision." *Hinesburg Sand & Gravel Co. v. Town of Hinesburg*, 135 Vt. 484, 487, 380 A.2d 64, 67 (1977).

Defendant's fourth point regarding the compensatory

damages award concerns the mitigation of damages. He argues that the lower court failed to consider two mitigating factors: (1) on their federal income tax returns, the Florys depreciated the cost of air conditioners purchased to control odor in their motel, yet they were awarded their full cost in the form of compensatory damages, and (2) the use of these air conditioners reduced the harm that the Florys would have otherwise incurred. As to the first of these contentions, any tax benefit received by the Florys as a result of their purchase of the air conditioners was derived from a collateral source, i.e., the United States government. The "collateral source rule" allows a plaintiff full recovery against a tort-feasor even where he is otherwise compensated by a source independent of the tort-feasor. *My Sister's Place v. City of Burlington*, 139 Vt. 602, 612, 433 A.2d 275, 281 (1981); see also *Felder v. United States*, 543 F.2d 657, 670 n.17 (9th Cir. 1976) (distinguishing between government as independent source and government as tort-feasor). Any tax benefit received by plaintiffs is a matter solely between them and the taxing authority. *Cereal Byproducts Co. v. Hall*, 16 Ill. App. 2d 29, 81, 147 N.E.2d 383, 384 (1958), aff'd 15 Ill. 2d 313, 155 N.E.2d 14 (1958); *Weisenberger v. W. E. Hutton Co.*, 35 F.R.D. 556, 558 (S.D.N.Y. 1964). If we considered the significance of such tax benefits, then we would also have to consider the dimunition of damages awards by taxation. There was no error in disregarding this extraneous issue.

Furthermore, although the air conditioners may have had some ameliorating effect upon the odor problem, it does not follow that damages were mitigated. All but one of the units were purchased for the Florys' motel. The trial court's calculation of lost use value for the motel was based on an actual decrease in room rentals, and this decrease occurred despite the existence of the air conditioners. The Florys did install one of the window units in their four-bedroom home, but we cannot say that any minimal mitigation represented by this unit was overlooked in the computation of damages. Mrs. Flory testified that in her opinion the rental value of her home had decreased

by $300 per month, and the trail court accepted this evidence. Mrs. Flory was competent to testify regarding the value of her property, and the weight afforded to her opinion was a matter for the trier of fact. See *Shortle v. Central Vermont Public Service Corp.*, 134 Vt. 486, 489, 365 A.2d 256, 258 (1976). Thus, we find no error relating to mitigation of plaintiff's damages.

Defendant's challenge proceeds with an attack upon the compensatory award to plaintiff Nelson. He argues that the trial court erred by awarding full damages for loss of business at Nelson's gourmet shop despite the evidence that other causal factors may have been involved and despite the sensitive nature of the enterprise. These arguments lack relevance, however, because the lower court did not award damages to plaintiff Nelson based on loss of business; instead, the court recognized the difficulties inherent in such an assessment and awarded damages based on lost rental value. This approach minimized the influence of factors other than the existence of the pig farm, and no error appears.

The final question presented regarding the trial court's computation of compensatory damages is whether the trial court "double-counted" in assessing damages to plaintiffs Nelson and Flory. Defendant contends that plaintiffs' awards of $15,500 and $15,300, respectively, for "lost use or rental income" and the awards of $50,000 and $60,000, respectively, for "deprivation of the full use and enjoyment of the property and emotional upset, annoyance and discomfort" are duplicative and, therefore, erroneous. In making this argument, defendant ignores the trial court's conscientious explanation of each element of the ward, and he confuses compensation for proprietary losses with compensation for personal losses. Where an abatable nuisance is found to exist, the award of damages can properly include both compensation for the lost use of property (calculated on the basis of diminished rental or use value) and compensation for personal injuries such as annoyance, discomfort, and inconvenience. *Wilson v. Key Tronic Corp.*, 40 Wash.

App. 802, 811, 701 P.2d 518, 525 (1985); see also *Rust v. Guinn*, 429 N.E.2d 299, 302-04 (Ind. App. 1981); and Prosser, *supra*, § 90, at 602-03. The situation here was complicated because plaintiffs Nelson and Flory used their properties both as residences and as business locations. The court's findings distinguished carefully between their proprietary damages and personal damages. In essence, the trial court ordered full compensatory damages for all plaintiffs as residents and then awarded specific, additional amounts to plaintiffs Nelson and Flory as compensation for their business losses. Thus, the compensatory damage awards here do not include duplicative elements, and they are proper in all other respects as well.[4]

C.

In addition to assessing compensatory damages, the trial court awarded plaintiffs a total of $380,000 in punitive damages. Defendants assert that punitive damages are unwarranted here, arguing that the evidence does not support a finding of actual malice.

In order to recover punitive damages, a plaintiff must demonstrate actual malice on the part of the defendant. *Shortle v. Central Vermont Public Service Corp.*, 137 Vt. 32, 33, 399 A.2d 517, 518 (1979). But no direct evidence of the defendant's mental state is required; instead, the nature of his conduct and the surrounding circumstances can establish his motive and his state of mind. *Dahlen v. Landis*, 314 N.W.2d 63, 69 (N.D. 1981). Thus, a showing of "conduct manifesting personal ill will or carried out under circumstances evidencing insult or oppression, or . . . a reckless or wanton disregard of one's rights" will suffice. *Shortle*, 137 Vt. at 33, 399 A.2d at 518 (citation omitted).

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[4]Raymond Ramsey also suggests that the magnitude of the compensatory awards indicates that the trial court enhanced them on grounds of malice, but he provides no support for his claim.

The trial court here found that "[d]efendants allowed the farm to operate as it did for the express purpose of upsetting, harassing and disturbing plaintiffs. The defendants intentionally disregarded the rights of plaintiffs under circumstances manifesting extreme ill will and insult." Defendants impugn this and other findings of malice, but the record is replete with evidence supporting the trial court's determination with respect to Normand Ramsey. A complete reiteration of the evidence is not required, but we note the following circumstances: the timing of the establishment of the piggery, the importation of many junked automobiles, the positioning of these vehicles and all other aspects of the operation near plaintiffs' properties, the dumping of two hundred cubic yards of wet chicken manure directly across from plaintiffs' properties, the threatening telephone calls, and the gross mistreatment and neglect of the farm animals. We also observe the absence of any other motive, commercial or otherwise, for maintaining the operation at issue.

On the other hand, the evidence elicited at trial does not support the court's finding of actual malice with respect to Raymond Ramsey. In sum, the record reveals that Raymond sought permits for the proposed motel, obtained permits for the farm, helped erect the fence around the farm, and directed the dumping of the first load of manure. Although this degree of participation in the nuisance was sufficient to create tort liability in Raymond, it did not rise to such a level that actual malice on his part could be inferred. The court's findings on the malice issue, often referring to defendants in the plural, are therefore clearly erroneous to the extent that they implicate Raymond Ramsey. It follows that Raymond cannot be held liable for punitive damages and the trial court's judgment on this matter is reversed.

Because of Vermont's adherence to the doctrine of joint and several liability, our disposition of the punitive damages issue raises other questions. Where joint tortfeasors are involved, the traditional rule is that punitive damages are to be assessed "according to the guilt of the most innocent of the defendants; and,

if any of them was acting in good faith and so not liable for such damages, none can be awarded in the suit." *Parker v. Roberts*, 99 Vt. 219, 225, 131 A. 21, 24 (1925). In theory, this rule would protect a relatively innocent defendant, otherwise liable only for compensatory damages, from enhanced liability on the ground of another defendant's malice.

Because of Vermont's adherence to the doctrine of joint and several liability, our disposition of the punitive damages issue raises other questions. Where joint tortfeasors are involved, the traditional rule is that punitive damages are to be assessed "according to the guilt of the most innocent of the defendants; and, if any of them was acting in good faith and so not liable for such damages, none can be awarded in the suit." *Parker v. Roberts*, 99 Vt. 219, 225, 131 A. 21, 24 (1925). In theory, this rule would protect a relatively innocent defendant, otherwise liable only for compensatory damages, from enhanced liability on the ground of another defendant's malice.

Many states have rejected the rigid application of the doctrine of joint and several liability in the context of punitive damages because of the problems it entails. Instead, these jurisdictions have adopted the rule that such damages may be apportioned among joint tortfeasors either by assessing the awards in varying amounts or by levying punitive damages against some defendants but not others. See *Shields v. Martin*, 109 Idaho 132, 138, 706 P.2d 21, 27 (1985); *Embrey v. Holly*, 293 Md. 128, 134, 442 A.2d 966, 973 (1982) and cases cited therein. This approach also maximizes effectiveness and fairness because each award can be calibrated to reflect the particular defendant's culpability and financial resources. *Embrey*, 293 Md. at 134, 442 A.2d at 973. We agree with the reasoning of these courts and hold that joint and several liability does not attach in the context of punitive damages; the traditional rule, as enunciated in *Parker*, is therefore abandoned. Here, because the trial court assessed punitive damages with reference to Raymond Ramsey, remand is necessary for reconsideration of the awards in light of Normand Ramsey's culpability and financial status.

D.

Normand Ramsey argues that the court's assessment of punitive damages is excessive under the case law of this and other jurisdictions, and he urges that the awards contravene the protections of the state and federal constitutions against excessive fines. Although we are remanding the cause for reconsideration of these awards, discussion of the issues raised will provide valuable guidance to the trial court.

Because of the nature of punitive damages, no standard for precise measurement is available, and their assessment is largely discretionary with the finder of fact. See *Greenmoss Builders, Inc. v. Dun & Bradstreet, Inc.*, 143 Vt. 66, 77, 461 A.2d 414, 419 (1983). On review, such an assessment will not be interfered with unless it is " 'manifestly and grossly excessive.' " *Id.* (quoting *Croy v. Janicki*, 118 Vt. 49, 52, 99 A.2d 707, 709 (1953); see also *Woodhouse v. Woodhouse*, 99 Vt. 91, 160, 130 A. 758, 790 (1925). Even where "the verdict may be considerably more or less than, in the judgment of the court, it ought to have been, still it will decline to interfere unless the amount is so great or small as to indicate that it is the result of perverted judgment, accident, or gross mistake." *Woodhouse*, 99 Vt. at 157, 130 A. at 789.

We are not persuaded that the awards at issue are manifestly and grossly excessive. Punitive damages are not awarded in an attempt to compensate the plaintiff, but "on account of the bad spirit and wrong intention of the defendant." *Glidden v. Skinner*, 142 Vt. 644, 648, 458 A.2d 1142, 1144 (1983) (citations omitted). "The purpose of punitive damages . . . is to punish conduct which is morally culpable . . . [and] to deter a wrongdoer . . . from repetitions of the same or similar actions . . . . The public benefit and a display of ethical indignation are among the ends of the policy to grant punitive damages." *Hilder v. St. Peter*, 144 Vt. 150, 164, 478 A.2d 202, 210-11 (1984) (quoting *Davis v. Williams*, 92 Misc. 2d 1051, 1054, 402 N.Y.S.2d 92, 94 (N.Y. Civ. Ct. 1977)).

In the course of assessing punitive damages, the finder of fact must take into account the character and standing of the defendant, the malice or wantonness of the defendant's conduct, and the financial status of the defendant. See *Woodhouse*, 99 Vt. at 155, 130 A. at 788. Here the weightiest factor in the punitive damages assessment was the degree of malice involved. Short of physical violence, it is difficult to imagine a situation entailing greater animosity and malevolence than that exhibited here, and the punitive damages award, as made, is an appropriate reflection of the "bad spirit and wrong intention" of defendants.

The other *Woodhouse* factors also provide support for the award. Defendants include a family corporation and its president. Normand Ramsey is a successful entrepreneur who maintains a small empire of motels, farms, a nursing home, and an automobile supply store, and whose net worth is in exceess of three million dollars.

Defendant looks to case law from this and other jurisdictions in an attempt to demonstrate that the assessment of punitive damages here was excessive. Although such comparisons are of dubious value, we note two analogous cases in which punitive damage awards of similar proportions were affirmed. *Miller v. Carnation Co.*, 564 P.2d 127 (Colo. App. 1977), involved a poulty ranch that was declared a nuisance because of infestations of flies and rodents resulting from inadequate manure removal. A punitive damage award to a single neighbor of $300,000, which was assessed in addition to $85,748 in compensatory damages, was affirmed on appeal. Likewise, in *Bower v. Hog Builders, Inc.*, 461 S.W.2d 784 (Mo. 1970), a hog farming operation was found to have been a continuous nuisance over a period of four years. The farm had been designed with manure lagoons that would overflow periodically, sending excess excrement across neighbors' lands and into their surface waters. This condition, as well as odors and fly infestations, continued despite complaints from the plaintiff neighbors. The jury awarded one plaintiff $34,200 in actual damages and $60,000 in

punitive damages and a second plaintiff $12,000 in actual damages and $30,000 in punitive damages. These awards were upheld against a claim of excessivenss. *Id.* at 805-06.

Given the effects of inflation, the awards challenged here to not differ appreciably in magnitude from those affirmed in *Miller* and in *Bower*. Furthermore, critical distinctions can be drawn because both *Miller* and *Bower* involved legitimate and profitable animal husbandry operations and because neither included allegations of actual malice. *Id.* at 798-99; *Miller*, 564 P.2d at 131. In contrast, the record here supports a conclusion that the piggery was established and maintained solely for spiteful purposes.

Normand Ramsey asks this Court to gauge the award against a different standard, however, invoking Chapter II, § 39 of the Vermont Constitution and the Eighth Amendment of the United States Constitution. Section 39 relates to criminal prosecutions and indictments and provides that "all fines shall be proportioned to the offences." Vt. Const. chap. II, § 39. The Eighth Amendment also prohibits excessive fines. U.S. Const. amend. VIII. But the terms of these constitutional provisions, as well as their context, limit their applicability to criminal punishments. This Court has distinguished between the imposition of a fine in a criminal proceeding and the award of punitive damages in a civil action. *Hoadley v. Watson*, 45 Vt. 289, 292, 12 Am. Rep. 197, 198 (1873). On the other hand, the United States Supreme Court has noted that "[s]ome punishments, though not labeled 'criminal' by the State, may be sufficiently analogous to criminal punishments in the circumstances in which they are administered to justify application of the Eighth Amendment." *Ingraham v. Wright*, 430 U.S. 651, 669 n.37 (1977). Here, we observe only that, even if these constitutional provisions have some application, the punitive damages as assessed would not violate their protections.

E.

Defendant Normand Ramsey concludes by questioning the standing of the Florys' to sue in the name of their business because they failed to register the name of their motel pursuant to the requirements of 11 V.S.A. § 1621, and were, therefore, not entitled to maintain this action. We do not resolve the issue; it constitutes an affirmative defense which was not raised specifically and in a timely manner. *Senesac v. Duclos*, 128 Vt. 601, 603, 270 A.2d 156, 158 (1970); V.R.C.P. 12.

Affirmed in part and reversed in part; the cause is remanded for reconsideration of the punitive damages awards.

For the Court:

S/_____
Associate Justice

IN THE SUPREME COURT OF THE STATE OF VERMONT

VICTOR and MARY COTY
DOROTHY NELSON d/b/a STOWE COUNTRY SHOP and
ANTON and PAMELA FLORY
d/b/a DIE ALPENROSE MOTEL

v.

RAMSEY ASSOCIATES, INC.
NORMAND RAMSEY and RAYMOND RAMSEY

Supreme Court Docket No. 85-399

Appeal from

Lamoille Superior Court

Docket No. S134-82 Lc

MOTION OF DEFENDANTS-APPELLANTS RAMSEY ASSOCIATES, INC. AND NORMAND RAMSEY FOR REARGUMENT

Pursuant to Rule 40 of the Vermont Rules of Appellate Procedure, Ramsey Associates, Inc. and Normand A. Ramsey move the Court for reargument on the grounds that the Court has either overlooked or misapprehended particular points of law and fact presented in Appellants' original briefs and oral argument all as set forth in the supporting brief submitted herewith.

Dated at Burlington, Vermont this _____ day of February, 1988.

Respectfully submitted,

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By: S/ _____
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Supreme Court Docket No. 85-399

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Docket No. S134-82 Lc

BRIEF IN SUPPORT OF APPELLANTS' MOTION
FOR REARGUMENT

INTRODUCTION

Defendants Appellants Ramsey Associates, Inc. and Normand Ramsey have moved for reargument of the following points:

1) The Trial Court's award of compensatory damages must be reversed and remanded for reconsideration because the award included damages for unsightliness.

2) The Trial Court wrongly predicated nuisance on a finding of malice or spite in violation of Appellants' rights of free speech and protest under the First Amendment to the United States Constitution.

I. THE TRIAL COURT'S AWARD OF COMPENSATORY DAMAGES MUST BE REVERSED AND REMANDED FOR RECONSIDERATION BECAUSE THE AWARD INCLUDED DAMAGES FOR UNSIGHTLINESS

The Trial Court found that the Ramsey Farm was an unsightly eye-sore and awarded Plaintiffs compensatory damages in part for this perceived interference with their visual and aesthetic senses. The findings on which the Trial Court based its award of compensatory damages to the Plaintiffs makes clear that the unsightliness of the Ramsey Farm was the predominate, and the only continuous, invasion and damage to the Plaintiffs on which the Court based its award. See, for example, Finding No. 21 ("unsightly farm operation containing a large number of pigs"); number 22 (storage tank); No. 44 ("unsightly farming operation"); No. 45 (haywagon); No. 46 ("trailer and junk cars"); No. 58 ("pipe trench and mounds of dirt . . . leaving the property in an unsightly condition"); No. 59 (animal and skin conditions "observed" by Plaintiffs); No. 72 (garbage strewn all over the property); and Nos. 89, 101, and 117 ("general unsightliness of the property"). Moreover, the primary impact on the Plaintiffs of what the Court found to be "offensive animal husbandry practices" was purely visual.

On appeal, although this Court recognized the general rule in Vermont that the unsightliness of thing or activity does not render it a nuisance, the Court nevertheless sustained the Trial Court's award of compensatory damages because it concluded that the nuisance found by the Trial Court included not only unsightliness, but also "*in large part* . . . the odors, the flies, and the offensive animal husbandry practices." (Emphasis added). See opinion at Page 8.

This conclusion, however, fails to recognize that a "nuisance" actually describes a type of damage or interference with a person's use and enjoyment of his land rather than a cause of action which triggers damages proximately caused. Prosser states it well in his treatise on the law of torts:

> "Nuisance, in short, is not a separate tort in itself, subject to rules of its own. Nuisances are types of damage—the invasion of two quite unrelated kinds of interest, by conduct which is tortious because it falls into the usual categories of tort liability."

W. Prosser, *The Law of Torts* § 87 at 577 (4th ed.), *citing* Restatement of Torts (scope and introductory note to Chapter 40 preceding section 822).

In the case of negligence, liability for full damages may be founded as one of several alleged negligent acts or omissions, even if others are found to be non-actionable. With nuisance, it is the actionable interference itself upon which the damages must be assessed. If an alleged interference turns out to be non-actionable, no damages may be assessed for that interference. The Trial Court's award was for an aesthetic interference as well as other claimed interferences. The Court below did not allocate its award of compensatory damages among these various types of nuisance damages. The Trial Court did not determine what damages were caused by the odors, the flies, etc. alone as opposed to the purely visual aspect of the accused farm. It is im-

possible for this Court to determine what portion of the damages found flowed from visual distress and what constituted actionable nuisances. The compensatory damage claims should be remanded to the Trial Court for a determination of the damages sustained from interferences other than unsightliness.

II. THE TRIAL COURT WRONGLY PREDICATED NUISANCE ON A FINDING OF MALICE OR SPITE IN VIOLATION OF APPELLANTS' RIGHTS OF FREE SPEECH AND PROTEST UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

The Trial Court gave considerable weight in its determination of nuisance to what it found to be Defendants' bad motive for the farm. In our main Brief, we noted that farming was an approved use of this land under the Stowe zoning regulations and that as a general rule, an improper motive does not convert an otherwise lawful act into an unlawful one. This Court rejected Defendants' position and ruled as follows:

> "The great majority of jurisdictions have held that where a Defendant has acted solely out of malice or spite, such conduct is indefensible on social utility grounds, and nuisance liability attaches."

See Opinion at 9.

The Trial Court found and this Court has affirmed that the Defendants instituted and maintained the Stowe farm for purposes other than profit. If that is the case, the only and obvious explanation was that it was intended as a protest against what appeared to the Defendants to be an arbitrary and nonsensical attitude toward their prior motel proposal by the adjoining landowners and the Act 220 Board. Such protests are clearly protected by the First Amendment to the U.S. Constitution.

At trial, the Plaintiffs complained that the very fact of the

Ramsey farming operation to be a "slanderous statement" directed against them. Plaintiffs' counsel, Mr. Stevens, argued the point:

> "Secondly, we feel that given the publicity of this whole matter with respect to this Act 250 permit and the opposition about it, and the fact that here these people are opposing Ramsey Associates on the grounds of undue water pollution and aesthetics, and Mr. Ramsey almost the next day after being denied his permit, dumps sixteen truckloads of manure across from the main opponents property for no apparent reasonable purpose, is in itself a slanderous statement and was holding our clients—my clients—up for public ridicule."

See trial transcript, July 24, 1985, at 32.

The Trial Court apparently accepted this argument and awarded Plaintiffs damages for "public embarrassment and humiliation." *See* Trial Court's Findings and Order, Finding No. 95 at p. 17. Such an award cannot stand constitutional muster. See *Falwell v. Hustler*, U.S. Supreme Docket No. _____, February 24, 1988.

Plaintiffs opposed the Defendants' application for a motel permit on the grounds of aesthetics and anticipated groundwater pollution. Certainly it seems ironic that the applicable land use regulations which allowed the denial of a motel permit on the grounds of aesthetics at the same time permitted a pig farm without any review of aesthetic considerations. If the pig farm is seen as a deliberate act, its founding, closely following the denial of the motel permits, was a statement of protest by Ramsey. And, as we argued at the original oral argument in this case, this is precisely the kind of statement protected by the First Amendment to the United States Constitution. It is black letter law that such expressive conduct is afforded protection under the First Amendment. *See, e.g., Buckley v. Valeo*, 424 U.S. 1

(1976) (contributing money); *Spence v. Washington*, 418 U.S. 405 (1974) (displaying flag with peace symbol attached); *Cohen v. California*, 403 U.S. 15 (1971) (wearing sign on back of jacket); *Schacht v. United States*, 398 U.S. 58 (1970) (wearing uniform); *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969) (wearing black armbands); *Edwards v. South Carolina*, 372 U.S. 229 (1963) (demonstration); *NAACP v. Button*, 371 U.S. 415 (1963) (litigation); *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) (compulsory flag salute); *Thornhill v. Alabama*, 310 U.S. 88 (1940) (picketing); *Stromberg v. California*, 283 U.S. 359 (1931) (displaying red flag).

Founding and running the farm as a statement of protest is recognized and protected by the United States Constitution. Awards of damages and punitive damages for exercise of a First Amendment right cannot stand.

CONCLUSION

Based on the foregoing, Defendants-Appellants Ramsey Associates, Inc. and Normand A. Ramsey respectfully request reargument on the above points of law and fact.

Dated at Burlington, Vermont this _____ day of February, 1988.

Respectfully submitted,

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STATE OF VERMONT
LAMOILLE COUNTY, SS.

Victor and Mary Coty, et al

Lamoille Superior Court

vs.

Docket No. 134-82Lc

Ramsey Associates, Inc., et al

FINDINGS AND ORDER

The above-captioned matter came on for hearing on Plaintiffs' Complaint for damages and other equitable relief. The Plaintiffs and Defendants were present in Court with their respective counsel. Based on the evidence presented, the Court makes the following findings:

1. The Plaintiffs, Victor and Mary Coty (the Cotys) are the owners of real estate with a private dwelling located on Route 108 in Stowe, Vermont. The Cotys have resided at this location since 1944 and at all times material to this suit.

2. The Plaintiff, Dorothy Nelson, d/b/a Stowe Country Shop and as Executrix of the Estate of Donald Nelson (Nelson) is the owner of real estate with a gift and gourmet food shop located on Route 108 in Stowe, Vermont. She and her now deceased husband, Donald Nelson, had owned the real estate since 1973 at which time they put in a gift shop. The shop has been in operation since 1974 and at all times material to this suit.

3. The Plaintiffs, Anton and Pamela Flory, d/b/a Die Alpenrose Motel (the Florys) are the owners of real estate with a seven unit motel and private residence located on Route 108 in Stowe, Vermont. They have owned the real estate since 1966

and have operated a motel and resided on the premises since that time and at all times material to this suit. At the time this suit was filed and service was made on the Defendants, the Florys had not registered to do business as Die Alpenrose Motel in accordance with 11 V.S.A. Section 1634. Anton Flory did so register as of June 27, 1985.

4. The Defendant, Ramsey Associates, Inc., (the Corporation) is the title owner of sixteen (16) acres of real estate located on Route 108 in Stowe, Vermont (the Property). The Property abuts the Cotys' property on its southerly end and is across the road from Nelson and the Florys. The Nelson and Flory properties are located near the southerly end of the Property.

5. The Defendant, Normand Ramsey, is president and sole shareholder of the Corporation. He resides on and operates a 165 acre farm in South Burlington, Vermont, which is owned by the Corporation.

6. The Corporation also owns a 486 acre farm in Addison, Vermont, a chain of motels, a nursing home, and an auto supply store.

7. The Defendant, Raymond Ramsey, is the son of Norman Ramsey and is vice-president of the Corporation.

8. Route 108 in Stowe is the main access to the Stowe ski area. There are many motels, shops and restaurants along Route 108 as well as some private residences. The area is zoned for commercial use. Agricultural use is permitted as well.

9. Up through 1981, the Property was primarily used as a hay field. On occasion, corn was grown on the Property and cows were allowed to graze.

10. The Property was one of the last open meadows along Route 108. It had a scenic view of Mt. Mansfield and was often

used by the public for hiking or cross-country skiing. Artists frequented the Property as well to paint the view of Mt. Mansfield.

11. The Corporation purchased the Property in 1981 for approximately $110,000.00. The Property was intended for motel construction.

12. The Corporation has developed and owned a number of commercial properties, including other motels and farms in Maine, New Hampshire and Vermont.

13. During 1981 and 1982, R. Ramsey was in charge of obtaining the necessary permits for construction of a 79 unit motel on the Property.

14. Plaintiffs had received notice of the Corporation's application for an Act 250 permit to construct a motel.

15. The Plaintiffs, as interested parties, opposed the issuance of a permit based on their concerns over water pollution and aesthetics.

16. Due to soil conditions and the lay of the land, effluent from the proposed motel would have polluted the Nelson and Flory properties across the road.

17. Plaintiffs formed a committee and actively opposed the motel construction on the Property. The committee offered to purchase the Property from the Corporation for approximately $165,000.00 which offer was refused. The Plaintiffs had intended to donate the Properrty to a land preservation organization.

18. Raymond and Normand Ramsey were aware of the Plaintiffs' opposition to the issuance of an Act 250 permit as of June, 1981.

19. When N. Ramsey learned of their opposition, he publicly

vowed that the motel would be constructed regardless of the Plaintiffs' position. He eagerly anticipated confronting the Plaintiffs and he claimed that with his financial resources, he could easily outlast the Plaintiffs in any protracted dispute.

20. Although the Property was approved for the construction of a 15 unit motel, it was denied Act 250 approval for a 79 unit motel. The denial was based on a lack of aesthetics and water pollution since there was inadequate on-site disposal of effluent.

21. Notice of the denial was issued by mail at the end of October, 1982. N. and R. Ramsey were angered and upset over the denial. They immediately decided to retaliate against the Plaintiffs for their opposition to the motel. From the evidence presented as will be set forth below, the Court reasonably infers and so finds that N. and R. Ramsey set out to intentionally harass, annoy and disturb the Plaintiffs and to cause them economic hardship by putting in a foul smelling, unsightly farm operation containing a large number of pigs. Although a farming operation was a permitted use of the Property under Stowe's zoning ordinance, the Defendants purposely planned to make the farm so offensive to the Plaintiffs that they then would welcome construction of a motel and end their opposition to it.

22. At the end of October, the Defendants placed an eight foot by thirty foot storage tank on the Property which was never used. A few days later, R. Ramsey, N. Ramsey and other workers put up a wire fence around the outside perimeter of the Property and running parallel to the roadway approximately thirty feet in from the roadway. While erecting the fence and walking about the Property, they would point at the Plaintiffs' properties and laugh. When Mrs. Coty inquired of N. Ramsey as to the purpose of the fence, he stated it was for sheep or pigs and shouted the word "pigs" at her.

23. On November 2nd and November 3rd, 1982, sixteen truckloads of chicken manure were dumped on the roadside

edge of the Property. They were placed on a strip approximately six hundred feet long and between ten feet to thirty feet wide. This strip was immediately in front of the Nelson and Flory properties. Although the Defendants claim only six loads were brought in, the Court does not find their testimony credible in light of contradictory deposition testimony, bills for manure delivery to Stowe, and Plaintiffs' eyewitness testimony as to the number of loads brought in.

24. Each load contained approximately thirteen cubic yards of wet chicken manure. It produced an overwhelming stench.

25. The truckdrivers of the two trucks used the Florys' driveway to back onto the Property and dump the chicken manure. Their driveway and the roadway became covered with manure which fell from the backing trucks. Due to the large amount of manure which covered the road, the fire department was contacted by police to hose down the road. The large quantity of manure on the road had caused the road to become slippery and dangerous.

26. N. Ramsey had ordered the chicken manure to be delivered to the Property by Weston Trucking. He had also told the drivers to put the manure on the edge of the Property immediately in front of the Plaintiffs' property.

27. R. Ramsey was present when the manure was delivered. He also pointed out to the driverrs where the manure should be placed and he pointed to the same strip of land N. Ramsey had requested the dumping to take place.

28. During delivery of the manure, the drivers and R. Ramsey would gesture towards the Plaintiffs' property and would continue to laugh and joke among themselves.

29. More loads of manure would have been delivered but for the issuance of a temporary restraining order which was served

on a driver, Robert Begins, who was attempting to make another delivery on November 3rd.

30. After Begins was served the restraining order, he spoke with N. Ramsey on the telephone at police headquarters. N. Ramsey told him to comply with the restraining order served on him by police.

31. While speaking with police, Begins happened to mention that the Ramseys finally got back at the Plaintiffs by dumping the chicken manure near their properties. He stated that the Plaintiffs bit off more than they could chew and now that there is a farm on the Property, they will wish there were a motel there instead.

32. The manure piles were placed between fifty feet to one hundred feet from the Plaintiffs' properties.

33. N. Ramsey had previously used chicken manure on his South Burlington farm so was well aware of its potency and highly offensive, foul smelling odor.

34. At the temporary hearing in November, 1982, the Defendants falsely represented to the Court that the manure would be rototilled into the ground and cover four acres in accordance with proper agricultural practices. They further represented that they planned to grow corn on the rototilled area. Based on these representations, the Court refused to enjoin any further acts of the Defendants. After several weeks, the manure piles were eventually levelled off but were not in fact rototilled into the earth. Only one-half acre, not four acres, was covered with manure along the strip next to the roadway.

35. The manure was placed on the Property in contravention of all proper farming practices.

36. During this time Richard Parizo, who was a carpenter by

trade, was employed by Defendants to do odd jobs. He had taken a couple of farming courses in college.

37. Mr. Parizo's deposition and trial testimony that he ordered this quantity of chicken manure for shock treatment to the soil is not credible. Likewise, his testimony that the soil was depleted of nutrients is not credible.

38. Mr. Parizo had never tested the soil in accordance with proper farming practice to determine how much, if any, fertilizer was needed. The soil had in fact been fertilized previously on a regular basis.

39. The amount of chicken manure dumped on the ground would kill crop, not further its growth.

40. Defendants' Exhibit N indicates, and the Court so finds, that spreading manure in winter on frozen ground is the worst possible use of manure. The nutrient value is lost and it poses a pollution threat to waters.

41. Mr. Parizo's deposition testimony that the manure was not spread for several weeks due to rainy weather is similarly not credible in light of the Defendants' Exhibit N's directive that manure should be spread during rain for best fertilization results.

42. The dumping of manure was not done to grow corn but was in furtherance of the Defendants' plan to intentionally annoy and harass Plaintiffs.

43. The manure gave off a strong, unbearable stench through the late fall and into the early part of the winter. The Plaintiffs were familiar with the smell of manure and found the usual smell inoffensive when applied to the ground in the proper manner. However, the stench from over two hundred cubic yards of chicken manure concentrated in front of their properties was

highly offensive and sickening to them. It caused them to feel ill and brought on an infestation of flies which caused additional annoyance.

44. In late October and November, 1982, R. Ramsey applied for a zoning permit to operate a farm and a permit for placement of a trailer and septic system on the Property. He obtained these permits in furtherance of the Defendants' original plan to retaliate against the Plaintiffs by putting a foul smelling, unsightly farming operation on the Property.

45. A hay wagon was brought onto the Property and was positioned at the southerly end.

46. In late November, 1982 approximately 100 pigs and cows were placed on the Property along with the trailer and ten to twelve junk cars. The feeding of the animals took place on the Property in an area closest to the Plaintiffs' properties.

47. In December, 1982 N. Ramsey contacted Mrs. Nelson by phone on two occasions. He threatened her that serious consequences would result if she did not drop her opposition to the motel.

48. During the winter of 1982 and 1983, the Plaintiffs were able to observe that the animals on the Property had no shelter, food or water. Due to the snow, farmhands had difficulty reaching the animals since the only access to the Property was a driveway at the northerly end. The animals became sick, lame and had visible skin diseases. Mrs. Nelson's offer to provide water to the animals was turned down by the farmhands.

49. The Plaintiffs could observe dead animals lying about the Property.

50. In the spring, 1983 the stench of manure returned.

51. About eleven to thirteen more loads of chicken manure were brought to the Property of about thirteen cubic yards each. Nine loads again were placed along the strip of land in front of the Nelson and Flory properties and the remaining four loads in the rear of the Property near the stream and within twenty-five feet of Coty's property. This manure was allowed to remain in piles for approximately one month. It was then spread along the strip where manure had previously been spread. Although Defendants' farmhands went through the motions of rototilling the manure into the ground, it was in fact only rototilled into itself since the manure was so deep. On the strip in front of Plaintiffs' properties, the manure was over three feet deep in places.

52. N. Ramsey had directed that these loads be delivered to the Property in furtherance of the original plan to annoy and harass Plaintiffs. While the manure was being delivered, Mrs. Nelson observed a driver park and wait for her to leave her gift shop. She pretended to leave by car but hid and watched the driver. As soon as she was out of sight, she saw the driver purposely place his load of manure directly in front of her property and within fifty feet of it.

53. Corn was planted on the outer perimeter of the Property. It grew where no manure had been placed and did not grow where there was manure.

54. The dumping of a total of twenty-four truckloads of chicken manure in late 1982 and mid 1983, each containing thirteen cubic yards, on an area approximately thirty feet by six hundred feet was the equivalent of an application of two hundred tons per acre. If the strip on which the manure was dumped was only ten feet by six hundred feet, as testified to by some of the Plaintiffs, the application would have been the equivalent of six hundred tons per acre.

55. A proper and reasonable application of chicken manure

for growing corn is a maximum of five tons per acre. Dr. Magdoff, an expert soil scientist at the University of Vermont, characterized even two hundred tons per acre as a gross over supply, and the Court so finds.

56. Mr. Parizo's trial testimony that eighteen to twenty-one tons per acre is a reasonable application is baseless. His deposition testimony that forty ton per acre is reasonable is even less supportable.

57. The foul odor of chicken manure continued through the spring, summer and fall of 1983. The manure brought an infestation of flies which was highly annoying and upsetting to Plaintiffs since the flies were inside their homes and businesses.

58. In July, 1983 a water line was put on the Property to service the trailer. A trench was dug for the pipe. Rather than filling the trench back in with dirt, mounds of dirt, eight feet high, were left along the length of the pipe for no reason other than to leave the Property in an unsightly condition.

59. In the summer of 1983, over one hundred pigs and other animals were on the Property. Plaintiffs observed that the pigs continued to be lame and have skin diseases. The carcasses of dead pigs were allowed to lay about the Property and rot.

60. An excessive number of boars were allowed to mingle with the sows and piglets. The boars would often attack the piglets. They also caused bloodied gashes on other animals since their teeth, which should have been cut back, were not cut back.

61. Between fifty to one hundred roosters were penned together on the Property. They would often peck each other to death or would be left in the pen severely injured and barely alive.

62. During the spring and summer of 1983 and 1984, Nelson's

well and springs became polluted. Mrs. Nelson had tested her springs and well from 1980 through 1984. There was a direct correlation between the dumping of manure, flow patterns of water from the Property to her property, and the existence and increase of pollutants in her well and springs. On at least one occasion, she received notice from the State to boil her water before use.

63. Prior to the manure dumping in 1982, her well and springs were clear and free of pollution. After the manure was dumped, heavy algae growth appeared in her springs and her water supply contained increased amounts of coliform and nitrates, all indicators of unhealthful pollution.

64. The pollution of Nelson's water supply was caused by the excessive manure the Defendants placed on the Property.

65. Her springs continue to be polluted although her well is presently free of pollution.

66. During the winter of 1983 and into 1984, the animals again were not properly fed or cared for although slightly more shelter was available.

67. In the spring of 1984, the odor of chicken manure returned along with the highly offensive odor of rotting carcasses. Plaintiffs observed dead sheep and pigs lying about the Property.

68. In 1984, the Defendants insisted that Mrs. Nelson allow test wells to be placed on her property so that any pollution could be monitored by the State. This testing was to be in furtherance of Defendants' attempts to obtain a permit for motel construction.

69. Mrs. Nelson opposed the placement of test wells on her property. Immediately after a court order issued in her favor

and against allowing the test wells, Plaintiffs observed and heard pigs being slaughtered, and shot throughout an entire morning. This slaughter and shooting of pigs occurred on the Property within a few hundred feet of Plaintiffs' properties. The Plaintiffs found these actions to be highly upsetting. It may be reasonably inferred and the Court so finds that Defendants killed these animals in full sight or hearing of Plaintiffs in retaliation against Nelson's assertion of her property interest which happened to have conflicted with the Defendants' interest.

70. During the summer of 1984, some corn grew along the edge of the Property. It was never harvested but was allowed to rot on the stalk.

71. During 1983 and 1984, traffic became heavily congested in front of the Plaintiffs' properties as tourists would stop, look at the pigs and take photographs. The tourists would trespass on the Plaintiffs' properties and interfere with the use and enjoyment of their properties. Defendants encouraged the tourists to visit. In fact, an instruction sheet was left for farmhands on how to treat tourists.

72. In the fall of 1984, the Property contained over two hundred pigs, litters of piglets, the roosters, and a few sheep and goats. Garbage was strewn all over the Property and the feeding troughs were found to be under mud and never had been used. The animals were sickly, malnourished or starving. Twenty fully grown dead pigs lay about the Property together with two fully grown dead sheep and one goat and a number of dead piglets. Randy Hanlon, the Defendants' farm manager who occasionally visited the Property, was aware of these conditions as were the Defendants who had visited the Property. Dr. Stevenson, a veterinarian, had been called on an infrequent basis to provide care to the animals. What little care he provided was inconsequential considering the large number of animals requiring care.

73. In late 1984, the dead animals were finally placed in an uncovered pit which was dug within several feet of the stream running along the edge of the Property.

74. In June, 1985 Mr. Hanlon, with the knowledge and assent of N. Ramsey, misrepresented the contents of this pit to the Department of Water Resources Agency of Environmental Conservation. Mr. Hanlon himself had told the farmhand to bury the twenty-three fully grown animal carcasses and piglets and knew the pit contained them. Instead, he informed the Department that the pit only contained piglets which died when a mother sow rolled on them.

75. The Plaintiffs had observed these dead animals being placed in the pit and also observed sickly, malnourished pigs attacking one another.

76. In November, 1984 the Defendants became aware that many sows would be giving birth in the winter. They were further aware that these sows and newborn piglets would have no protection from the cold. No protection was provided.

77. In January, over one hundred piglets were born. Due to the lack of shelter, the cold, starvation and being trampled by other animals, many of these piglets died.

78. Mr. Hanlon himself removed eight to ten burlap bags filled with the carcasses of piglets.

79. During the winter of 1984 and 1985, the pigs barely received any water since water pipes froze and were not repaired. The small amount of water provided was totally inadequate to water two hundred pigs.

80. Newly born lambs were attacked by the pigs since they were improperly allowed to mingle together. Mr. Hanlon testified and the Court so finds that N. Ramsey and R. Ramsey

were aware of these conditions from having spoken with Mr. Hanlon and visiting the farm themselves. They never complained about conditions or made improvements in the operation of the farm until spring, 1985, shortly before this matter came on for trial.

81. The animals then began receiving better treatment. They were seen on a regular basis by a veterinarian, given proper medical care and were fed, watered and sheltered. The excess number of boars were removed from the farm as well as the more sickly animals. The pigs were numbered and tagged in order to keep track of their progress and condition.

82. However, in the spring of 1985, Plaintiffs again could smell the odor of rotting carcasses. The offensiveness of the odor had decreased from previous years. No corn was planted in the spring.

83. A few weeks before the commencement of trial, Plaintiffs observed that the number of animals on the Property decreased substantially. There are presently only forty pigs on the Property. The diseased pigs were removed and clean, healty pigs were brought onto the Property. Grass has been allowed to grow so the meadow no longer appears rooted up. A fence has been erected to hide the storage tank and the junk cars have been removed. The number of pig huts has been decreased and those remaining were turned around to face the rear of the Property. No explanation for the sudden changes were offered by Defendants. However, at trial, counsel requested the Court to view the Property.

84. The animals on Defendants' farms in South Burlington and Addison had been receiving proper care and treatment since the inception of their farming operations in the mid 1970's.

85. Although N. Ramsey testified that he gave all of his animals better treatment than ever recommended by veterin-

arians and that the Stowe farmhands could have obtained anything needed for the animals, the Court does not find his testimony credible. Nor does the Court find credible his claim that he knew very little about the conditions on the farm.

86. Rather, the Court finds that Defendants knew of the inhumane treatment of the animals in Stowe and knew of the number of animal deaths. They knew the animals lacked shelter, lacked food and water, and lacked necessary medical care yet did nothing to change these conditions for over two years until this matter was a few weeks from final hearing.

87. Defendants used the pretext of operating a farm to abuse and kill animals which itself had no purpose other than to intentionally annoy, upset and harass Plaintiffs and to cause them economic injury.

88. N. Ramsey testified that about $50,000.00 has been invested in the Stowe farm, excluding the purchase price of the Property. The Court finds that this sum was invested, not to operate a farm in a reasonable manner, but to intentionally annoy, upset and harass Plaintiffs. Defendants wastefully purchased a gross oversupply of chicken manure, hired truckers to dump the manure in front of the Plaintiff's properties, planted corn which was never harvested, and freely allowed many animals of commercial value to either starve, be trampled, be attacked, or freeze to death. No pigs have ever been sold or marketed for their income. The farm has consistently been a financial loss to the Defendants, not surprisingly in light of its method of operation.

89. From 1982 through mid-1985, the Cotys have lost the full use and enjoyment of their home as a result of the odor of chicken manure and rotting carcasses, viewing dead and diseased animals on the Property and the general unsightliness of the Property. They have suffered emotional upset, annoyance, discomfort and public embarrassment, particularly during the

spring, summer and fall of each year due to the above described conditions.

90. If the Defendants' farm were operated in a reasonable manner in accordance with sound husbandry practices, the Cotys' property would suffer no permanent diminution in value.

91. If the Defendants' farm were to continue to operate in the offensive manner described above, the fair market value of the Cotys' property would decrease by $1,500.00 from its value had the farm been property operated.

92. No evidence was presented as to the temporary diminution in the property's use or rental value from 1982 through mid-1985 as a result of the manner of the farms operation.

93. Nelson's property consists of a gift and gourmet shop and delicatessen. Mrs. Nelson prepares and serves food to customers. Water is obtained from a well on the property. There are also four springs on the property. The water is used for general cleaning purposes in connection with the operation of the business. It is operated on a full time basis.

94. Mrs. Nelson's business has decreased since the Defendants have conducted their farming operations as described above. The foul odor of chicken manure and rotting carcasses was not conducive to the operation. of a gourmet food shop and the shop was fequently infested with flies. Her well water had been unusable on occasion as a result of the manure dumping and her springs continued to be polluted as a result of the manure dumping.

95. Additionally, the Defendants' actions have deprived her of the full use and enjoyment of the property. She has suffered emotional upset, annoyance, and public embarrassment and humiliation due to the Defendants' actions.

96. Although there may have been other contributing factors, the Defendants' actions caused her a loss of gross sales and net profits. Between 1978 and 1981, annual gross sales averaged $110,000.00 and net profits $10,000.00. Between 1982 and the present, annual gross sales have averaged between $70,000.00 to $80,000.00 and profits have decreased to $6,000.00.

97. Although Mrs. Nelson's property has never been rented to others, based on comparables in the area, she is of the opinion and the Court so finds that the use or rental value of her property has decreased from $1,500.00 per month to $1,000.00 per month as a result of the Defendants' actions. This decrease in value has taken place from November, 1982 to June 1, 1985 and totals $15,500.00.

98. If the Defendants' farm were operated in a reasonable manner in accordance with sound husbandry practices, Mrs. Nelson's property would continue to suffer intermittent water pollution of her well and springs. The pollution of her well could be remedied by the installation of a water purifier for approximately $5,000.00. However, the springs would continue to be polluted by algae growth.

99. If the Defendants' farm were to continue to operate with the excesses as described above, the fair market value of Nelson's property would depreciate from $199,500.00 had the farm been operated properly, to $178,000.00. The reduced value of $21,500.00 is largely based on the loss of profit attributable to the Defendants' actions.

100. From 1982 through 1985, the Florys have lost the full use and enjoyment of their property and have suffered a loss of business income.

101. The have undergone emotional upset, annoyance, discomfort and public embarrassment as a result of the chicken manure on their driveway, its odor and that of rotting carcasses,

the viewing of dead and diseased animals on the Property, the killing of animals, and the general unsightliness of the Property. These conditions were particularly evident during the spring, summer and fall of each year.

102. If the Defendants' farm were operated in a reasonable manner in accordance with sound husbandry practices, the Florys' property would suffer no permanent diminution in value.

103. If the farm were to continue to operate in the offensive manner as described above, the fair market value of the Florys' property would decrease by $17,000.00, that is, from $160,000.00 to $143,000.00. One reason for the decrease in value is the revenues lost in room rentals as a result of the Defendants' operation of the farm.

104. The Florys were required to purchase air conditioners for their motel rooms due to the foul odor of manure. The air conditioners cost $1,861.00 which expense the Florys otherwise would not have incurred.

105. The Florys and motel guests were unable to use their outdoor swimming pool due to the foul odor of manure and excessive number of flies from the late spring through the early fall of 1983 and 1984.

106. The Flory family experienced much stress and harassment due to the unpleasant conditions and their family life deteriorated.

107. Their motel business decreased from spring through fall of 1983 and 1984 since guests did not want to stay in the front three motel rooms due to the foul odors. Based on the rental income of previous years, the front three rooms decreased in rental value from $6,000.00 per year each to $5,000.00 per year

each for a total yearly loss of $3,000.00. This loss occurred during 1983 and 1984 and totaled $6,000.00 loss of rental value.

108. Although the Florys' home has never been rented, Mrs. Flory is of the opinion and the Court so finds that the use or rental value of their four bedroom home decreased as a result of the Defendants' operation of the farm as described above. It has decreased from November, 1982 to June 1, 1985 and from an original value of $1,000.00 a month to $700.00 a month. The total decrease in use value is $9,300.00.

109. None of the Plaintiffs are persons of above average sensitivity to foul odors or unpleasant sights.

110. The Corporation is a holding company holding notes and real estate. It owns a chain of motels, farms, a nursing home and an automobile supply store. Its assets exceed its liabilities by $3,000,000.00.

111. The Corporation was started by N. Ramsey a number of years ago. He can best be described as a self-made man whose entrepreneurial skill led him to invest in and develop a series of successful business enterprises. Some of these businesses continue to be held by the Corporation while others have been incorporated separately. N. Ramsey's sons are involved in the operation of some of these businesses. The numerous transfers of business interests among N. Ramsey, his sons and the holding companies over the years have been legally sophisticated and complex. N. Ramsey and R. Ramsey both appeared knowledgeable about these transfers.

112. N. Ramsey is the sole shareholder of the Corporation. He owns two part-time residences jointly with his wife and valued at $150,000.00, and IRA account in the amount of $40,000.00, $50,000.00 in stock and $6,500.00 in commodities. His only debt is an unsecured $75,000.00 note.

113. R. Ramsey is the sole shareholder of a corporation holding a motel and restaurant in Maine with a fair market value in excess of $1,000,000.00. The motel and restaurant have a mortgage of $750,000.00.

114. R. Ramsey also owns a house in Maine with the fair market value of $120,000.00 and has an annual income of $53,500.00 from his motel business.

115. Although N. Ramsey and R. Ramsey admitted to the ownership of these assets, the Court does not believe they testified in an honest and forthright manner concerning their finances. Despite their evident business acumen and understanding of complex business matters, they pretended little or no memory of what assets they owned and total ignorance of the value of any assets. Their answers to questions about their personal income were evasive and incomplete. The Defendants' failure to testify in a forthright manner was due to their knowledge from court hearings that the amount of any punitive damage award was in part dependant upon the extent of their wealth.

116. Defendants allowed the farm to operate as it did for the express purpose of upsetting, harassing and disturbing Plaintiffs. The Defendants intentionally disregarded the rights of Plaintiffs under circumstances manifesting extreme ill will and insult. The Defendants' testimony, that in operating the farm they were only following the advice of lawyers, consultants, government officials, or others is not credible.

117. A farming operation with animals and crop could exist on the Property without offensive odors of chicken manure or animal carcasses and without causing an infestation of flies. It could exist without general unsightliness.

118. Since June, 1985 the farm has been operated properly without the odors, flies or unsightliness described above.

CONCLUSIONS

As a preliminary matter, the Defendants argue that the Florys were prohibited from instituting this suit for damages since they failed to register their business name, Die Alpenrose, prior to the issuance of the original return or complaint. 11 V.S.A. §§ 1631, 1634 require the registration of a business name in order to institute proceedings for the enforcement of any right or obligation.

The purpose of requiring the registration of business names is to insure that persons know the identity of others with whom they are dealing and to prevent fraud or unfair dealing. 1960-62 Op. Atty. Gen. 96. However, statutes such as Vermont's are in derogation of the common law and should not be applied where by their provisions they were not intended to apply. 57 Am Jur 2d *Name* § 25. It has been frequently held, under statutes worded somewhat differently than Vermont's, that registration statutes do not prohibit the filing of tort actions. 57 Am Jur 2d *Name* § 32. The filing of actions has been allowed particularly where the tort action was brought under a person's true name and not solely under the assumed business name. 65 C.J.S. *Names* § 9(3).

This Court recognizes that Vermont case law has uniformly prohibited the filing of complaints by persons not in compliance with Vermont's registration statutes. ***Enosburg Grain Co. vs. Wilder***, 112 Vt. 11 (1941); ***Amey vs. Vermont Products Co.***, 107 Vt. 178 (1935). However, there are several circumstances present in the instant action which make that result inappropriate and unjust.

The Florys' Complaint is based on the commission of a tort rather than on a breach of contract or other business transaction. It was brought in their names personally and in their business name. They allege that they suffered personal injury and damages and business injury and damages as a result of the

Defendants' intentional and unreasonable use of their property and infringement upon the Florys' property rights. The Defendants could have been neither deceived nor prejudiced by the Florys' failure to register. Although a strick application of the registration statue might, at the most, prohibit the Florys from claiming damages to their business while still allowing them to file suit personally, the Court does not believe the statute was intended to apply in circumstances as exist in the instant case. The Florys should not be left without a remedy particularly where they claim damages based on the commission of an intentional tort. Therefore, the Defendants' argument that the Florys' failure to register deprives the Court of jurisdiction to adjudicate their claim is rejected.

Although the Plaintiffs failed to prove they were slandered by the Defendants, the Court does conclude that the Defendants' operation of the farm did constitute a nuisance for which the Defendants are liable and which nuisance may be enjoined by the Court. N. and R. Ramsey intentionally and deliberately infringed upon the Plaintiffs' full use and enjoyment of their properties through the unreasonable use of the Property. The Plaintiffs suffered material and substantial annoyance, upset and embarrassment. The Florys and Nelson suffered additional damages by way of lost use or rental value of their properties.

The Florys and Nelson also suffered a trespass as a result of the Defendants' placement of chicken manure on the Florys' property and allowing manure to pollute Nelson's well and springs.

All Defendants are liable to the Plaintiffs, even though N. and R. Ramsey were acting as agents of the Corporation:

> [A]n officer of a corporation is liable for a tort in which he has participated and the person wronged may proceed against him though the corporation may also be liable.

Northeast Acceptance Corp. vs. Nichols, 110 Vt. 478, 488 (1939).

The measure of compensatory damages to which each of the Plaintiffs are entitled is dependant upon their particular circumstances. The Cotys were deprived of the full use and enjoyment of their property and suffered emotional upset, discomfort, annoyance and embarrassment as a result of the Defendants' maintenance of a nuisance from November, 1982 through the Spring, 1985. If the nuisance were abated, the Cotys would suffer no permanent injury. They are entitled to be compensated for the temporary injuries suffered by them.

The Florys are also entitled to recover for the emotional upset, discomfort, annoyance and embarrassment suffered by them as well as the loss of the full use and enjoyment of their property from November, 1982 through the Spring, 1985. They are also entitled to recover the cost of air conditioners, the loss of rental income of the three front motel rooms during this time period and the loss of the use or rental value of their home due to the existence of the nuisance. However, since the nuisance may be abated, the Florys are not entitled to recover damages based on a permanent loss of the fair market value of their property. Their property would regain its full value upon abatement of the nuisance. The Florys did suffer additional upset from the placement of chicken manure on their driveway for which they may be compensated.

Nelson, like the other plaintiffs, may recover for the emotional upset, discomfort, annoyance and embarrassment suffered by her during the two and one-half years the nuisance was in existence. She lost the full use and enjoyment of her property and incurred a loss of rental or use value of her property for which she may be compensated. She also suffered pollution of her springs and well and may be compensated the cost of a water purifier to remedy any continuing, intermittent pollution. If the nuisance were abated, Nelson's property would not suffer any

other permanent damage or decrease in its fair market value; therefore, she may not be compensated for same. Similarly, since Nelson is receiving damages based on a loss of rental value, she may not receive double compensation for her loss of net profits for the time period in issue.

As to both the Florys and Nelson, the Court finds the loss of the property's rental or use value a more appropriate measure of damages than either loss of the property's fair market value or loss of net profits. Loss of fair market value is a proper measure only if the damage to the property were permanent. Loss of net profits does not factor in ski and other tourist related conditions which might account for the Plaintiffs' net loss or gain in any given year.

Punitive damages shall be assessed against the Defendants since all acted with personal ill will and in wanton and wilfull disregard of the Plaintiffs' rights. The Defendants' operation of the farm was intended to interfere with Plaintiffs' use and enjoyment of their properties and was intended to annoy, upset and disturb. The Defendants achieved their objectives in part through the abuse and intentional killing of animals. The amount of punitive damages awarded will be in reference to R. Ramsey, the least culpable and least financially wealthy of the Defendants. *Parker vs. Hoefer*, 118 Vt. 1 (1953), *Woodhouse vs. Woodhouse*, 99 Vt. 91 (1925) (standing of least wealthy defendant should be considered).

ORDER

WHEREFORE, judgment is entered for the Plaintiffs against the Defendants. FURTHER, Defendants are hereby enjoined as follows:

A. Defendants are enjoined from operating a farm on the Property in any manner other than in accordance with proper

and reasonable husbandry practices. Any animals on the Property shall receive proper shelter, food, water, and veterinary care.

B. Defendants are enjoined from any further trespass upon Plaintiffs' property or pollution of Nelson's springs and well.

C. Defendants are enjoined from slaughtering, killing or, through any form of neglect, allowing the deaths of animals on the Property.

D. Defendants are enjoined from creating offensive odors on the Property including, but not limited to, odors from excessive manure or animal carcasses.

E. Defendants are enjoined from allowing any manure to remain on the property in excess of twenty-four hours without being fully rototilled into the soil and in the proper quantities.

F. Defendants are enjoined from placing or doing anything upon the Property which is injurious or unhealthful to people, animals or crops.

G. Defendants are enjoined from causing any unreasonable environmental pollution or doing anything on the Property which attracts excessive amount of flies or other insects to the area.

FURTHER, the Cotys are hereby awarded damages as follows:

a) $40,000.00 compensatory damages for deprivation of full use and enjoyment of their property and emotional upset, annoyance and discomfort plus interest from the date of judgment.

b) $80,000.00 punitive damages plus interest from the date of judgment.

Nelson is hereby awarded damages as follows:

a) $15,500.00 compensatory damages for lost use or rental income, $5,000.00 compensatory damages for installation of a water purifier, and $50,000.00 compensatory damages for deprivation of the full use and enjoyment of the property and emotional upset, annoyance and discomfort for a total of $70,500.00 compensatory damages plus interest from the date of judgment.

b) $150,000.00 punitive damages.

The Florys are hereby awarded damages as follows:

a) $1,861.00 compensatory damages for the cost of air conditioners, $6,000.00 compensatory damages for the loss of room rentals, $9,300.00 compensatory damages for the loss of the rental or use value of the home and $60,000.00 compensatory damages for the deprivation of the full use and enjoyment of the property and emotional upset, annoyance and discomfort for a total of $77,161.00 compensatory damages plus interest from the date of judgment.

b) $150,000.00 punitive damages.

Plaintiffs shall be awarded their costs of suit.

DATED at Hyde Park, Vermont, this 15th day of August, 1985.

S/ _____
Linda Levitt, Presiding Judge
As to Facts and Law

S/ _____
Ronald N. Terrill, Assistant Judge

S/ _____
Clifford C. Porter, Assistant Judge
Lamoille Superior Court

As to Facts Only